

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-263-E**

Cherokee County Cogeneration Partners, LLC)	
)	DUKE ENERGY CAROLINAS,
)	LLC'S AND DUKE ENERGY
Complainant,)	PROGRESS, LLC'S THIRD SET OF
)	REQUESTS FOR PRODUCTION OF
v.)	DOCUMENTS AND
)	INTERROGATORIES TO
Duke Energy Progress, LLC and)	CHEROKEE COUNTY
Duke Energy Carolinas, LLC,)	COGENERATION PARTNERS, LLC
)	
Respondents.)	

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (together, “Duke Energy” or the “Companies”), by and through their legal counsel, pursuant to Rule 103-833(C) of the Rules of Practice and Procedure of the Public Service Commission of South Carolina (“Commission”), hereby serves Cherokee County Cogeneration Partners, LLC (“Cherokee”) with the following Third Set of Requests for Production and Interrogatories (“Requests”) to be answered under oath on or before twenty (20) days from the date of service.

Further, please take notice that these Requests are continuing in nature until the date of the hearing, and that any information or responsive materials identified after your responses have been served upon the undersigned counsel should be provided via supplemental discovery responses as soon as possible after such identification.

INSTRUCTIONS

1. Please produce the requested documents as they are kept in the usual course of business or to organize and label them to correspond with the categories in the Request. Documents attached to each other should not be separated.

2. In producing Documents, furnish all documents known or available to you, regardless of whether such documents are possessed directly by you or your agents, employees, representatives, investigators, or by your attorneys. All requests for Documents specifically request documents of Cherokee, Cherokee's parent company, LS Power, and/or Documents developed by or in the possession of Mr. Kurt Strunk of National Economic Research Associates, Inc. ("NERA"), who you have retained to provide testimony in this proceeding.

3. If any document otherwise responsive to any Request was, but is no longer, in your possession, subject to your control or in existence, identify each document by listing its author(s) and addressee(s), date, subject matter, whether the document(s) or copies are still in existence (and if so, their locations and the custodians), as well as whether the document is missing or lost, has been destroyed, has been transferred voluntarily to others, or has been otherwise disposed of. In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing its destruction or transfer, and the date(s) of such direction or authorization.

4. If a privilege or objection as to any Request is claimed, identify with specificity the matter as to which the privilege or objection is claimed, the nature of the privilege or objection, and the legal and factual basis for each such claim, and provide a complete description of the information or document being withheld.

5. Unless otherwise stated, the relevant time period for these Requests is from June 1, 2018, until the present.

6. Physically or electronically segregate Documents produced in response to a particular Request from Documents produced in response to any other particular Request, and identify the Request to which they are responsive. If a Document is responsive to more than one particular Request, specify each Request to which such Document is responsive.

7. In producing Documents pursuant to a Request, please mark the documents with the specific Request number pursuant to which the Documents are being produced and mark each page of each Document produced with a Bates number.

8. All Documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets should be provided in their native form.

9. These Requests are continuing in nature, such that you must provide a supplemental response if and when you discover, obtain, or recollect other or further information responsive to any Request. In addition, you must amend the answer to any Request if and when you discover or ascertain that the answer was incorrect.

10. Please provide responses to the following Requests electronically. To the extent this is impracticable, the responses, including any responsive Documents, should be provided at the offices of Robinson, Gray, Stepp & Laffitte, LLC, 1310 Gadsden Street, Columbia, South Carolina 29201, or some mutually convenient location otherwise agreed to by the parties.

DEFINITIONS

1. **“Commission”** means the Public Service Commission of South Carolina.
2. **“Communication”** means the transmittal of information in the form of facts, ideas, Documents, inquiries, or otherwise, including every discussion, conversation, conference, or telephone call.
3. **“Complaint”** means the Complaint filed in the Docket on November 2, 2020.
4. **“DEP”** means Duke Energy Progress, LLC.
5. **“DEC”** means Duke Energy Carolinas, LLC.
6. **“Docket”** means Commission Docket No. 2020-263-E.
7. The term **“document”** is to be construed as broadly as permissible under Rule 34 of the South Carolina Rules of Civil Procedure and includes, but is not limited to, any printed, typewritten, handwritten or otherwise recorded information of whatever character, including, but not limited to, letters, memoranda, notes, diaries, reports, records, calendars, charts, audio and/or video tapes or discs, and photographs; computer programs or disks; electronic media records, however recorded and maintained, including, but not limited to, electronic mail, voicemail messages, digital photographs and electronically scanned records of any type; recorded observations, statements, conversations or formal affidavits. Any carbon or photocopy of any such materials upon which notations have been made and all drafts are also included.
8. **“You”** and **“your”** means the Cherokee County Cogeneration Partners, LLC (“Cherokee”), Cherokee’s parent company, LS Power, and/or Cherokee’s witnesses

in this proceeding, including but not limited to, your retained witness from NERA, and all of their members, agents, representatives and attorneys.

9. **“Person”** means any natural person or any business, legal, or governmental entity or association.

10. The terms **“related to”** and **“relating to”** or any variation thereof shall be construed to include refer to, summarize, reflect, constitute, contain, embody, mention, show, comprise, evidence, discuss, describe, comment on, concerning, regarding, eluding to, pertaining to, probative of, in connection with, dealing with, in respect of, about, involved, identifying or proving.

11. **“Identify”** when referring to a Person, means to give, to the extent known, the Person’s full name, present or last known address, and when referring to a natural Person, additionally, the present or last known place of employment.

12. **“Identify”** when referring to Documents, means to give, to the extent known, the (i) type of Document; (ii) general subject matter; (iii) date of the Document; and (iv) authors, addressees and recipients.

13. **“Identify”** when referring to an oral Communication, means to give, to the extent known, the identity of the speaker and of each Person who was present when the Communication was spoken, and the substance, date, and place of such Communication.

14. **“Facility”** means the Cherokee generating facility.

15. **“FERC”** means the Federal Energy Regulatory Commission.

16. **“PURPA”** means Section 210 of the Public Utility Regulatory Policies Act of 1978 and FERC’s implementing regulations, 18 C.F.R. Section 292.

17. “**QF**” means a cogenerator or small power producer qualifying facility under PURPA.

INTERROGATORIES

3-1. Please explain in detail and identify the circumstances supporting Witness Hanson's statement at page 10, lines 4-5 of rebuttal testimony that "[i]n fact it was Mr. Keen who suggested DEP had a nearer term capacity need and suggested Cherokee file a LEO with DEP."

ANSWER:

3-2. Please identify the total number of Generating Facilities owned or operated by LS Power (or an affiliate or subsidiary of LS Power similar to Cherokee) that are certificated as QFs.

ANSWER:

3-3. Please identify any Generating Facilities owned or operated by LS Power (or an affiliate or subsidiary of LS Power similar to Cherokee) that are certificated as QFs, where the QF Generating Facility's capacity and energy output is sold to more than one utility offtaker under PURPA, as generally discussed on page 10, lines 12-14 of Mr. Hanson's rebuttal testimony.

ANSWER:

3-4. Please explain what is meant by "the economic regulation of PURPA" as used by Witness Hanson on page 9, lines 9-10 of his rebuttal testimony.

ANSWER:

3-5. Please explain in detail and identify the circumstances supporting Witness Hanson's statement at page 11, lines 7-9 of rebuttal testimony that "[a]t various times during negotiations, Duke postured that QFs were not eligible to be designated as "network resources" for transmission, and that we would be required to take "point-to-point" service to deliver output to DEP."

ANSWER:

3-6. With respect to Cherokee's statement made in its Request for Rehearing submitted to FERC on May 3, 2021, in FERC Docket No. ER21-304-002, that "[u]pon expiration of the PPA, Cherokee will indisputably 'ha[ve] the right to sell to a third party,' and, in obtaining and maintaining its market-based rate authorization, Cherokee has provided ... 'manifestation of [Cherokee]'s "plan to sell" output to third parties' after the termination of the PPA...." please explain how Cherokee's stated manifestation of its plan to sell output to third parties after the PPA's termination is consistent with the establishment of a legally enforceable obligation to sell the entirety of its output to DEC.

ANSWER:

3-7. Please identify any utility requests for proposals or solicitations for energy or capacity, other than the 2018 DEP RFP, to which Cherokee has responded since September 2018 with an offer or proposal to sell and deliver the Facility's output to a utility other than DEC or DEP.

ANSWER:

3-8. Please identify where in his testimony Witness Snider states that “QFs only establish LEOs once they have begun commercial operation and deliver energy and/or capacity,” as suggested by Cherokee Witness Strunk at page 3, lines 3-5 of his rebuttal testimony.

ANSWER:

3-9. Please identify where in his testimony Witness Snider states that “all QFs should have a LEO that is contemporaneous with the initial delivery of energy or capacity under the QF contract,” as suggested by Cherokee Witness Strunk at page 17, lines 5-7 of his rebuttal testimony.

ANSWER:

3-10. Admit that Cherokee first asked for information supporting the October 31, 2018 rates provided by DEC on April 30, 2019.

ANSWER:

3-11. Admit that Cherokee first asked for information supporting the February 1, 2019 rates provided by DEP on April 30, 2019.

ANSWER:

3-12. Admit that on June 14, 2019, DEC and DEP responded to Cherokee’s April 30, 2019 requests for information.

ANSWER:

3-13. Admit that after sending the April 30, 2019 requests for information, Cherokee's next communication to DEC or DEP occurred on March 30, 2020, via email by Witness Hanson to David Johnson of Duke Energy.

ANSWER:

3-14. Admit that on August 20, 2020, DEP provided responses to Cherokee's July 20, 2020 request for supplemental information regarding DEP's June 24, 2020 updated avoided cost rates.

ANSWER:

3-15. Admit that Cherokee initiated no communications or made any other requests for information from DEC or DEP regarding avoided cost rates and terms beyond those summarized in Attachment 1 to the pre-filed direct testimony of DEC/DEP Witness Michael Keen.

ANSWER:

3-16. Admit that Cherokee altered section 3 of the NOC Form, as sent to DEC on September 18, 2019 to remove the requirement that the QF Seller must certify that it has a maximum nameplate capacity of 2 MW and is eligible for the Company's Standard offer tariff.

ANSWER:

3-17. Admit that in the Request for Rehearing filed by Cherokee in FERC Docket No. ER21-304-002 on May 3, 2021, Cherokee stated that:

Upon expiration of the PPA, Cherokee will indisputably “ha[ve] the right to sell to a third party,” and, in obtaining and maintaining its market-based rate authorization, Cherokee has provided any “manifestation of [Cherokee]’s ‘plan to sell’ output to third parties” after the termination of the PPA that might be required to trigger the Commission’s jurisdiction over the LGIA at that time. Moreover, Cherokee expressly cited the option of “making wholesale sales at market-based rates” as a possibility following the expiration of the PPA in its February 1 Response. Notwithstanding the foregoing, the Commission, in the April 2 Order, falsely declared that there is “nothing in the record indicating that Cherokee plans to sell any of its output to a third party.”

ANSWER:

3-18. Admit that Cherokee has never submitted a request for transmission service to DEP.

ANSWER:

REQUESTS FOR PRODUCTION

3-1. Please produce copies of all Communications made since September 2018 to any other utility, load-serving entity, or power marketer (other than DEC and DEP) that mention the Facility, including but not limited to such Communications that mention the potential for entities other than DEC or DEP to purchase energy or capacity from the Facility.

RESPONSE:

3-2. Please provide any Documents supporting Witness Hanson's statement at page 10, lines 4-5 of rebuttal testimony that "[i]n fact it was Mr. Keen who suggested DEP had a nearer term capacity need and suggested Cherokee file a LEO with DEP."

RESPONSE:

3-3. Please provide any Documents demonstrating that Generating Facilities owned or operated by LS Power (or an affiliate or subsidiary of LS Power similar to Cherokee) that are certificated as QFs are selling the QF Generating Facility's capacity and energy output to more than one utility offtaker under PURPA, as generally discussed on page 10, lines 12-14. Please identify and provide any Documents that support this assertion.

RESPONSE:

3-4. Please produce any Documents supporting Witness Hanson's statement at page 11, lines 7-9 of rebuttal testimony that "[a]t various times during negotiations, Duke postured that QFs were not eligible to be designated as "network resources" for transmission, and that we would be required to take "point-to-point" service to deliver output to DEP."

RESPONSE:

Dated this 25th day of June 2021.

/s/Rebecca Dulin

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